

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS (Boston)

3 No. 1:20-cv-11530-FDS

4
5 THOMAS TURNER,
6 Plaintiff

7 vs.

8
9 LIBERTY MUTUAL RETIREMENT BENEFIT PLAN, et al
10 Defendants

11 *****

12
13 For Telephone Hearing Before:
14 Chief Judge F. Dennis Saylor, IV

15 Status Conference

16
17 United States District Court
18 District of Massachusetts (Boston.)
19 One Courthouse Way
20 Boston, Massachusetts 02210
21 Friday, February 17, 2023

22 *****

23 REPORTER: RICHARD H. ROMANOW, RPR
24 Official Court Reporter
25 United States District Court
One Courthouse Way, Room 5510, Boston, MA 02210
bulldog@richromanow.com

A P P E A R A N C E S

JACK B. WINTERS, ESQ.

SARAH BALL, ESQ.

Winters & Associates

8489 La Mesa Boulevard

La Mesa, CA 91942

(619) 234-9000

E-mail: Jackbwinters@earthlink.net

For Plaintiff

DMITRIY TISHYEVICH, ESQ.

RICHARD DIGGS, ESQ.

ANNABEL RODRIGUEZ, ESQ.

McDermott Will & Emery, LLP

340 Madison Avenue

New York, NY 10173

(212) 547-5534

Email: Dtishyevich@mwe.com

For Defendants

1 P R O C E E D I N G S

2 (Begins, 3:00 p.m.)

3 THE CLERK: Thomas Turner vs. Liberty Mutual
4 Retirement Benefit Plan, et al, Civil Action 20-11530.

5 I'm just reminding you that recording and
6 rebroadcasting of this hearing is prohibited and may
7 result in sanction.

8 Would counsel please identify themselves for the
9 record, starting with the plaintiff.

10 MR. WINTERS: Jack Winters on behalf of the
11 plaintiff.

12 MS. BALL: Sarah Ball on behalf of the plaintiff.

13 THE COURT: Okay.

14 MR. TISHYEVICH: And for defendants, Dmitriy
15 Tishyevich. And I'll let my associates introduce
16 themselves.

17 MS. RODRIGUEZ: Annabel Rodriguez on behalf of the
18 defendants.

19 THE COURT: Good afternoon.

20 MR. DIGGS: And Richard Diggs on behalf of the
21 defendants.

22 THE COURT: Good afternoon.

23 All right. This is a status conference in this
24 case. I have two motions pending, a renewed motion for
25 summary judgment, if that's the right word, and Liberty

1 Mutual has made a motion to stay discovery. The motion
2 to stay discovery is certainly, um, ripe.

3 Am I right that the summary judgment motion is not
4 yet ripe, Mr. Winters?

5 MR. WINTERS: Yes, your Honor, we have not filed
6 our response to the motion for summary judgment and
7 we're awaiting this decision as to when that would be
8 done.

9 THE COURT: All right. Let me jump ahead to my
10 conclusion.

11 What I'd like to do, I think, is there's a lot of
12 moving pieces here and I think I would benefit from
13 hearing argument on both at the same time to try to get
14 a sense of, um, what makes sense going forward.

15 But do I hear you, Mr. Winters, saying you think
16 you need a decision on the motion to stay before a
17 decision on the motion for summary judgment?

18 MR. WINTERS: No, your Honor, to be blunt with
19 you, I've sort of gone back both ways. I don't want to
20 start discovery and then have it truncated or anything.
21 I'm actually of the opinion that the Court and all of us
22 would probably benefit from having both of these motions
23 heard at the same time, it's a very difficult situation
24 to grasp and I think the Court would be well-advised to
25 take both motions under submission at the same time and

1 render its opinion. I hope we don't have to push it out
2 too far, but I can't see the benefit of starting
3 discovery only to have it interrupted by a hearing on a
4 motion for summary judgment.

5 THE COURT: All right. And from my standpoint I'm
6 not confident that I can make -- I'm not confident that
7 I can make an intelligent judgment at all at the end of
8 the day, but certainly not now, without a full grasp of
9 -- or a better grasp, I should say, of what all the
10 issues are.

11 But let me work backwards. When do you think you
12 can get an opposition to the summary judgment motion --

13 MR. WINTERS: Your Honor, we just -- we're
14 starting a trial, both law firms, um, very soon. I
15 think we could get it done in 45 days, 60 days.

16 THE COURT: From today?

17 MR. WINTERS: I apologize, I know that's a little
18 long, but, your Honor, we're just very very busy.

19 THE COURT: Um, all right, but that's pretty far
20 out.

21 Mr. Tishyevich, what's your view?

22 MR. TISHYEVICH: Um, so I'm not sure what changed
23 with the discovery calculus. As long as we're not
24 proceeding with discovery while these motions are
25 pending, we don't -- I don't have strong views on how

1 long it should take. If they're asking for 45 to 50
2 days, we would ask for at least 14 days to reply. We
3 don't know what their opposition is going to show. But
4 actually as long as we're on board with discovery. In
5 the meantime, I think this is all okay.

6 THE COURT: Okay, let me just do this. Hold on.
7 Let's see.

8 All right. 45 days takes us to the, um, end of
9 March.

10 I'm going to direct that, um, oppositions to the
11 motion for summary judgment will be due April 5th. Any
12 reply due by April 19th. And I'd like to get it on the
13 calendar for a hearing by zoom, um -- let's see.

14 (Pause.)

15 How about the afternoon of April 26th, Wednesday,
16 April 26th, does that work?

17 MR. WINTERS: It works fine, your Honor.

18 MR. TISHYEVICH: And for the defendants as well.

19 THE COURT: All right. So we'll say 2:00 by zoom
20 the afternoon of April 26th for the hearing on both
21 motions.

22 In the meantime, I'm not saying I'm "staying
23 discovery," because that suggests I'm granting the
24 motion, I'm going to hold the discovery in "abeyance."

25 Okay, how about that?

1 MR. WINTERS: Very good, your Honor.

2 THE COURT: I don't think it makes sense to put
3 all of this on pause while I'm deciding that very
4 motion.

5 MR. TISHYEVICH: Your Honor, could I --

6 THE COURT: Yes, go ahead, please.

7 (Interruption by Court Reporter.)

8 MR. TISHYEVICH: I apologize. This is Dmitriy
9 Tishyevich for the defendants. I just have one
10 question.

11 THE COURT: Yes, go ahead.

12 MR. TISHYEVICH: All right.

13 We've briefed several of these issues several
14 times until now and in reference to -- if the Court
15 would like us to focus on some issue for the oral
16 argument, I would be happy to do that. I'd just like to
17 save some time. If not, we'll just show up prepared to
18 argue whatever question may come up. But if it may be
19 helpful to focus us primarily, we'd be happy to do that
20 as well.

21 THE COURT: I mean it's hard to say in the
22 abstract, you know. I suppose there's a possibility
23 that I could have some blinding flash of insight and
24 realize that everything I've said until now is wrong,
25 but I think the more likely scenario is I just want to

1 talk about what issues are new, um, or you know new in
2 terms of I haven't ruled on them yet --

3 MR. TISHYEVICH: Understood.

4 THE COURT: -- and how you know additional
5 discovery might intersect with the resolution of that
6 issue.

7 You know as you know, um, sometimes -- you know
8 frequently people say, "Well I can't respond at summary
9 judgment without having proper discovery or I need -- in
10 fairness I need X, Y, and Z information." And I don't
11 know the answer to any of that. I've been given this,
12 um -- I don't even have an opposition to the summary
13 judgment motion, you know, and --

14 MR. TISHYEVICH: Okay. Understood. But that's
15 very helpful guidance.

16 THE COURT: Just don't, um, be afraid to keep it
17 simple.

18 I'm sure you'd be surprised to hear that I don't
19 think about ERISA every waking moment of my life. But
20 sometimes I have to get my brain back in gear or in gear
21 at all, maybe. But, um, I'll leave it to you to present
22 the arguments as you see fit.

23 MR. TISHYEVICH: Thank you, your Honor.

24 THE COURT: All right.

25 Plaintiff, does all that work?

1 MR. WINTERS: Very good, your Honor.

2 MR. TISHYEVICH: Yes, as to the defendants.

3 THE COURT: All right. Okay. Thank you all, take
4 care.

5 (Ends, 3:10 p.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do hereby certify that the forgoing transcript of the record is a true and accurate transcription of my stenographic notes, before Chief Judge F. Dennis Saylor, IV, on Friday, February 17, 2023, to the best of my skill and ability.

/s/ Richard H. Romanow 02-22-23

RICHARD H. ROMANOW Date